

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DONYAL THOMAS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:08-cv-101 MJR
)	
DR. MARY LOFTIN, et al.,)	
)	
Defendants.)	

ORDER

On February 11, 2008, the Plaintiff, a prisoner acting pro se, filed a complaint against a number of Illinois Department of Corrections officials for failing to properly treat a back injury he suffered after slipping and falling on a patch of ice (Doc. 1). In answering the complaint, Defendant Loftin raised the affirmative defense that Plaintiff failed to exhaust his administrative remedies prior to filing suit, in violation of 42 U.S.C. §1997e(a).

The Seventh Circuit recently held that discovery on the merits should not begin until the question whether a plaintiff has exhausted his administrative remedies within the meaning of the Prison Litigation Reform Act has been resolved. *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008). In an attempt to comply with *Pavey* as closely as possible, the Court will follow the procedure outlined below.

1. The parties are granted 30 days in which to conduct additional discovery. Discovery is limited exclusively to the issue of exhaustion of administrative remedies.
2. The undersigned magistrate judge will hold a hearing on the question whether Plaintiff has exhausted his administrative remedies on **June 3, 2009, at 2:00 p.m.** in the East St. Louis Federal Courthouse. Plaintiff shall participate by videoconference. Defendants shall appear in person. In lieu of witness testimony, the parties may

submit briefs, affidavits, and exhibits relevant to the question of exhaustion. Briefs, affidavits, and exhibits are due **May 26, 2009**.

3. The undersigned will make a written Report and Recommendation to the presiding United States District Judge recommending a factual determination on the exhaustion issue based on the evidence presented at the hearing.

IT IS SO ORDERED.

DATED: April 14, 2009

s/ Donald G. Wilkerson
DONALD G. WILKERSON
United States Magistrate Judge